

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7121 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

DEVAYATBHAI RUDABHAI

Appearance:

MRS VASAVDATTA BHATT for Petitioner

Mr BA Vaishnav for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/03/2000

ORAL JUDGEMENT

Learned advocate Ms. Vasavdatta Bhatt is appearing for the petitioner corporation. Learned advocate Mr.Vaishnav is appearing for the respondent workman. In this petition, this court has issued notice on 30.11.1999. Today, when the matter was taken up for

admission hearing, both the learned advocates have requested this court to take up this matter for final disposal. Hence, Rule. Mr. Vaishnav, the learned advocate appearing for the respondent has waived service of rule. On the facts and in the circumstances of the case, the matter is taken up for final hearing today itself.

2. In this petition, the petitioner has challenged the award passed by the labour Court, Junagadh in reference No. 60 of 1994 dated 26.4.1999 whereby the labour court has set aside the order of dismissal and has directed the petitioner corporation to reinstate the respondent in service with continuity of service and to pay sixty per cent of back wages with all consequential benefits. The facts leading to the filing of this petition, in short, are as under:

The respondent was employed in the petitioner corporation as a driver. The respondent had remained unauthorizedly absent from his duty for 49 days from 19.1.93 to 8.3.93. He was, therefore, served with a chargesheet and thereafter, departmental inquiry was initiated against him and during the course of said inquiry, it was proved that the respondent was guilty of the charges leveled against him and, thereafter, he was dismissed from service on 25.8.1993. Said order of dismissal was challenged by the respondent before the appellate authority which was rejected and thereafter, reference was preferred by the respondent workman being Reference (LCJ) No. 66 of 1994. The labour court, after hearing the parties and also after appreciating the evidence brought before it, directed that the present respondent should be reinstated in service on his original post with continuity of service with all consequential benefits and sixty per cent of back wages. The present petition has been directed against the said award dated 26.4.1999.

Before the labour court, the respondent workman has submitted pursis Exh. 11 to the effect that he is not challenging the legality and validity of the departmental inquiry which was initiated against him but was challenging the findings given by the inquiry officer. Therefore, the labour court, while exercising the powers under section 11A of the ID Act, found that the impugned order of punishment of dismissal from service is harsh and unjustified which would require interference under section 11 A of the ID Act and, therefore, the labour court has directed his reinstatement in service with all consequential benefits and sixty per cent of the back

wages for the intervening period.

I have perused the entire award. I have also heard the learned advocates for both the parties. From perusal of the award, it becomes clear that the respondent was working as a daily rated driver and at the time of dismissal, he has completed about one year of service as a driver. His services were terminated in July, 1992 due to monsoon season and thereafter, he was taken back in service at Bantwa Depot and thereafter, he was transferred to Keshod Depot but the respondent has not reported for duty at Keshod which is an undisputed fact. It is also an admitted fact that he remained absent from 19.1.1993 to 15.2.1993 and till the date decision of dismissal. The labour court has committed gross error in coming to the conclusion that the allegations of misconduct alleged against the respondent workman is not found to have been established. It is not disputed that after his transfer from Bantwa Depot to Keshod Depot, the workman had remained absent and has not reported for duty for the aforesaid period. Therefore, he has remained absent from duty for the aforesaid period and, therefore, it cannot be said that the misconduct as alleged against him has not been found to have been established and, therefore, the finding of the labour court, to that extent, is erroneous. However, I am of the firm opinion that for such a misconduct of remaining absent from duty for the above period, the punishment of dismissal from service is harsh and unjustified and the finding of the labour court, to that extent is quite just and proper. However, in view of the established misconduct, the labour court ought not to have given back wages of sixty percent as has been awarded by it. For that, the labour court has not given any reasons as to why the labour court is coming to such a figure of sixty per cent of the back wages for the intervening period. The labour court was not exercising the powers under section 11A of the ID Act in so far as granting of relief of back wages is concerned. It was the duty of the labour court to appreciate that for remaining absent from duty on the ground of his sickness, no permission has been obtained from the competent authority. I am, therefore, of the view that the labour court should not have awarded back wages of sixty percent for the intervening period while directing the petitioner to reinstate him in service with continuity of service. The labour court ought to have appreciated that the absence of a driver in petitioner corporation would certainly and adversely affect the administration and would result in hardships to the public at large. The labour court has erred in not considering all these aspects while reinstating and

awarding backwages to the respondent workman. I am therefore of the opinion that the award of the labour court is required to be set aside in so far as it relates to granting of sixty per cent of the back wages. I am also of the opinion that for the intervening period, the respondent should be granted 25% of the back wages and to that extent the impugned award is required to be modified by this court. In so far as the reinstatement of the respondent workman in service with continuity of service is concerned, same does not require any interference of this court in the present petition. Accordingly, the impugned award passed by the labour court is modified as under:

This petition is partly allowed. The petitioner corporation is directed to reinstate the respondent workman in service on his original post with continuity of service and all other consequential reliefs with 25% of the back wages for the intervening period. The petitioner shall reinstate the respondent workman in service within four weeks from the date of receipt of certified copy of this order. The petitioner corporation shall pay 25% of the back wages for the intervening period within six weeks from the date of receipt of certified copy of this order. The petitioner corporation shall also pay full wages to the respondent workman from the date of the impugned award i.e. 26th April, 1999 till the date of his actual reinstatement in service within six weeks from the date of receipt of certified copy of this order. Rule is accordingly made absolute in terms indicated hereinabove with no order as to costs.

22.3.2000. (H.K.Rathod, J.)

Vyas